

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS

April 25, 1991  
P.M.

Hearing Room F 1:30  
Tapes 71 - 74

MEMBERS PRESENT: Rep. John Schoon, Chair Rep. Hedy L. Rijken,  
Vice-Chair Rep. Jerry Barnes Rep. Lisa Naito Rep. Carolyn Oakley Rep.  
Beverly Stein Rep. Greg Walden

STAFF PRESENT: Terry Connolly, Committee Administrator Annetta  
Mullins, Committee Assistant

MEASURES CONSIDERED: HB 2208 Reconsideration HB 2052 WS  
HB 2211 WS HB 3361 PH HB 2902 PH HB 2903 PH & WS

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TAPE 71, SIDE A

010 CHAIR SCHOON calls the meeting to order at 1:56 p.m. and informs the committee that there is a problem with HB 2208 which the committee passed out. The amendments had a provision which permitted the credit unions to sell insurance, which is not unusual, but it did not contain the safeguards in the other financing institution bills. Some people who would be affected by this adversely were surprised by it because it was in the amendment, not in the original bill. They felt they didn't have a chance to address their concerns to the committee.

MOTION: REP. SCHOON moves to reconsider the vote by which HB 2208 was passed.

016 CHAIR SCHOON: The effect of the motion would be to bring the bill back to the committee for further consideration.

017 VOTE: In a roll call vote, all members present vote AYE. REP. OAKLEY is EXCUSED.

017 CHAIR SCHOON declares the motion PASSED and instructs Mr. Connolly to reschedule the bill for a public hearing and work session at the next full committee meeting.

023 CHAIR SCHOON opens the work session on HB 2052.

(Tape 71, Side A) HB 2052 - PROVIDES PROTECTION FOR PERSONS GIVING CERTAIN INFORMATION IN GOOD FAITH TO STATE BOARD OF ENGINEERING EXAMINERS.

025 TERRY CONNOLLY, Administrator, reviews the provisions of the bill.

The first hearing on the bill was February 28. During the public hearing a question was raised on the new language in Section 1, "any proceeding." I have checked with Legislative Counsel and was told that "any proceeding" would apply to not only proceedings before the board but would apply to any court case subsequent to that. The person making the complaint in good faith would be protected.

039 REP. STEIN: The word "answerable" is not a legal term. Should it be "liable?"

053 CHAIR SCHOON closes the work session on HB 2052 and asked that Mr. Connolly contact the board to let them know there are problems with the language.

062 CHAIR SCHOON opens the work session on HB 2211.

(Tape 71, Side A) HB 2211 - ADDRESSES REGULATION OF PROPERTY AND CASUALTY INSURANCE UNDER INSURANCE CODE. Witnesses: Bill Brooks, Insurance Division Lewis Littlehales, Insurance Division John Powell, State Farm Insurance Companies and North Pacific Insurance Company

064 MR. CONNOLLY reviews the provisions of the bill. The industry and division have met and there is a hand-engrossed bill (EXHIBIT A) and amendments HB 2211-1 through HB 2211-5 (EXHIBIT B). The -5 amendments replace the -2 amendments and the division is here to explain the -5 amendments.

083 BILL BROOKS, Insurance Division, introduces Lewis Littlehales. We met in mid-April with the industry. We have worked out almost all, if not all the problems that appeared at the hearing. We have incorporated into the -5 amendments the solutions.

137 LEWIS LITTLEHALES, Insurance Division: The changes on page 1 are to the relating clause because we added a section to be amended and the emergency clause. On page 2 of the engrossed bill, the amendments to ORS 737.310 are related to guaranty contracts that are issued in workers compensation insurance. We have replaced "guaranty contract," which is a one-time contract between the employer and the State of Oregon with "insurance policy" which is the relationship between the insurer and the employer. We are requiring that notice be given at the time the insurance policy is issued. >Section 2 is for fire insurance policies and relates to the amount of notice that is given for cancellations. In 1989 the cancellation was expanded to 30 days and that causes some problem when there is non-payment of premium. This amendment makes it clear that cancellation is 10 days in the event of non-payment of premium or 30 days for any other reason. If the fire policy is a part of the commercial liability insurance policy, a package, then the statutes governing commercial liability insurance will govern.

>Section 3 is the named-driver exclusion. >Section 4 relates to this issue but it says each insurer that issues automobile policies shall submit a statistical report of exclusions of named-drivers. That is so the director may determine how this effort is working. >Section 5 is for motor vehicle property damage only. We are making it clear that the coverage of those policies, which are very limited in scope, do not include coverage for loss of use of the covered vehicle. >Section 6 is for vehicle liability policies, specifically dealing with personal injury protection (PIP) benefits, and adds coverage for injury or damage arising from occupancy of vehicle. >Section 7 is the personal injury protection benefit section. It standardizes references to the days so it refers to calendar days. On page 5, line 43, "business" is deleted and replaced with "calendar." That has to do with the extent to which

the medical services shall be presumed to be reasonable and necessary unless the provider is given notice of denial in not more than 60 calendar days. >Section 8 amends ORS 806.080 (page 6 at line 30). That is a part of the motor vehicle excluded driver issue. >Section 9 is the same issue and is the same as in 6a. >Section 10 deals with workers compensation. It relates to Section 1 and provides that all employers that did not receive notice at the time that Section 1 was first amended will now get notice at the first renewal of the workers compensation policy occurring on and after July 1, 1992. >Section 12 is the emergency clause and Section 11 provides that the emergency clause applies to the fire section, Section 2, and the named driver exclusion sections, Sections 3, 8 and 9. The bill except those two issues becomes operative 90 days after sine die.

252 MR. BROOKS: Section 3 is the heart of the driver exclusion provision. Sections 2, 3 and 4 set up and are restatements of the current law but phrases in the proper language so when we get to the substance of Section 3 it will make sense.

275 MR. LITTLEHALES: The part about authorizing exclusions is at line 35 on page 3. The part that requires the signature of the excluded person as well as the exclusion of each named insured is on line 40. It will read, "When an insurer excludes a person as provided in this subsection, the insurer shall obtain a statement or endorsement, signed by each of the named insureds and each person excluded from coverage by name, that the policy will not provide any coverage required by paragraph (a) of subsection (2)..."

294 MR. BROOKS: We believe it is important to have the signature of the excluded person for several reasons. One of those reasons might be if that person were charged with a crime of driving without insurance, he/she would be in a much more difficult position in appearing before the judge in claiming he/she didn't know he/she didn't have insurance. Secondly, we think there might be a situation where a child was living at home, moved out and had a couple of bad tickets and in the interim the renewal had occurred while the child was away and the policy excluded that child. The excluded child might not know about it and when he/she may one day move home, drive the car never realizing he/she didn't have coverage.

We think the ability to exclude this person from coverage under the motor vehicle law is the fabric of the motor vehicle responsibility laws in this state. Anything that can be done to re-emphasize there is a financial responsibility law such as requiring the signature of the excluded person, ought to be done. Even though it is not a part of the contract that the parties negotiate, we want the companies to go one step farther and get the signature of the excluded party so he/she knows there is not coverage under the policy.

381 Issues discussed: >Excluded person is not available to give signature or excluded person refuses to sign. >Division proposed the bill to address the Supreme Court decision. >Notifying excluded drivers by registered and regular mail. >If person is not a member of household, he/she is not insured.

TAPE 72, SIDE A

>Responsibility of head of household to inform the people who are excluded that they are not covered.

099 CHAIR SCHOON: The -1 and -3 amendments (EXHIBIT B) have been withdrawn.

101 JOHN POWELL, State Farm Insurance Companies and North Pacific

Insurance Company. On page 3 of the hand-engrossed bill, the -4 amendment in lines 40 and 41 would still require the signature on the statement or endorsement of the named insured and eliminate the requirement for the signature of the excluded driver to simply state that insurance agents or agencies and company that wish to have a policy like that could, on their own, invoke such a policy. The company would be able to require the signature in order for an agent to place business with them.

If a person is not living in the household, they would have to have the permission of the named insured to have coverage anyway. In the case of a child living at home, this exclusion is going to be a pretty hot issue. It is unlikely that the young driver with a bad driving record who is causing the problem, would not know about this exclusion.

In the case of somebody outside the home who has been excluded in their absence and suddenly moves back into the household, the named insured is going to be the party who signs and will be the ones on the line if they allow their automobile to be used. If that person wrongs someone, their assets are likely to be named in the lawsuit. It would be the responsibility of the named insured in that case to assure that the people driving their vehicles have insurance.

We think, given the nature of this problem, it does not make sense to delay this. The President of North Pacific testified before this committee that if this gets complicated enough, they simply would not try to help people who have these situations and would simply deny coverage to families who want to exclude drivers.

The sending of notices to people would probably require a return receipt. Therefore, we would oppose that kind of notification as well.

205 REP. STEIN: Could the excluded driver be any member of the family?

208 MR. POWELL: I don't believe the named insured is allowed to be excluded under this legislation.

208 REP. STEIN: If the husband is the named insured and the wife has a lousy driving record, could the wife be excluded?

213 MR. POWELL: You probably could write a singular policy on one spouse and potentially could exclude the other. But if they were both named insureds, which is normally the case, you could not.

220 CHAIR SCHOON: Who is the named insured?

221 MR. POWELL: The named insured is the person named in the policy. That would almost always be the owner of the vehicle.

242 On page 4 of the hand-engrossed bill, our amendments would delete the section on line 13 through 18. It says if you do not get the statement required under (5) on page 3, the insurer still is not liable, but the insurer is subject to administrative action by the director. So they would face a civil penalty. It says you are required under (5) to get the signatures, then this section says not really but you will be hacked by the Insurance Commissioner if you fail to do that. I guess the intent was to allow us to make a good faith effort and if we were called before the commissioner we could argue we shouldn't get a fine because we did everything possible. However, there is no provision in Section 5 (a) for any leniency. We don't think that makes a lot of sense and the companies I represent are not going to take any kind of action that puts them at jeopardy with the Insurance Division. We would not rely on this section as a potential relief. It does not seem to make sense because this new (6) either repeals (5) or it doesn't. I think

the intent was to half way repeal it. It would make more sense to not have the section in the bill.

286 REP. BARNES: What effect would this have on an individual agent's license?

290 MR. POWELL: The action proposed in (6) would be against the insurer, however, the agent is an agent of the insurer. I cannot directly answer the question. I think the intent of this was that the responsibility of this act would be on the insurer since it is their liability on the risk, not the agent.

310 Issues discussed: >Written notification to excluded driver. >"Member of household."

TAPE 71, SIDE B

031 REP. STEIN: If we accept the amendment that says only the statement from the insured is required, what happens if the signature is not obtained.

037 MR. POWELL: If we do not get the required signatures of the named insureds, they are not excluded; they are covered. The policy would be that you could not exclude drivers without a signature.

051 MR. BROOKS: Our reason for Section 7 is requiring the signature of the excluded person. It was our thinking that requiring the excluded person has nothing to do with the contract between the insurance company and the insured. It is not a matter of contract. Therefore, if the signature of the excluded person is not obtained, what should be the sanction or consequence. We feel it would be in the nature of a violation of the Insurance Code on how insurance companies should do business. The usual sanctions for violations of the Insurance Company when an insurance company fails to do something, is in large part for the benefit of the public, is for us to sanction them through, usually, an administrative proceeding. If the signature of the excluded person is not going to be required, then our Section 7 becomes useless. Then I would agree with Mr. Powell that the consequence of not getting the insured's signature would be they "didn't climb the mountain" and therefore will have a policy that will cover everybody.

082 MOTION: REP. WALDEN moves that the HB 2211-4 amendments BE ADOPTED.

111 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. All members are present.

113 MOTION: REP. WALDEN moves that the HB 2211-5 amendments, as modified by

the HB 2211-4, BE ADOPTED.

118 CHAIR SCHOON: The modifications would occur on page 3, lines 40 and 41. Some of the - 5 language applied to lines 13 and 18 on page 4. Those portions of the amendments would not be included in the motion.

125 VOTE: CHAIR SCHOON, hearing no objection to the motion, declares the amendments ADOPTED. All members are present.

128 MOTION: REP. WALDEN moves that HB 2211, as amended, be sent to the Floor with a DO PASS recommendation.

132 VOTE: In a roll call vote, all members are present and vote AYE.

135 CHAIR SCHOON declares the motion PASSED.

144 REP. BARNES will lead discussion on the Floor.

150 CHAIR SCHOON announces that action on HB 2333 will be postponed because amendments are being drafted.

154 CHAIR SCHOON opens the public hearing on HB 3361 and declares the meeting in recess at 3:05 p.m.

(Tape 71, Side B) HB 3361 - PROHIBITS SALE OF ALKALINE MANGANESE BATTERY CONTAINING MORE THAN 0.025 PERCENT MERCURY MANUFACTURED ON OR AFTER JANUARY 1, 1992. Witnesses:Rep. Lisa Naito Brian Boe, National Electrical Manufacturers Association Ray Balfour, National Electrical Manufacturers Association and Battery Products Alliance Jim Craven, American Electronics Association Bob Danko, Department of Environmental Quality Quincy Sugarman, Oregon State Public Interest Research Group

159 CHAIR SCHOON reconvenes the meeting at 3:27 p.m.

The Preliminary Staff Measure Summary ((EXHIBIT C) and Legislative Fiscal Analysis (EXHIBIT D) are hereby made a part of these minutes.

157 REP. LISA NAITO, submits and reads a prepared statement in support of HB 336 1 (EXHIBIT E).

185 BRIAN BOE, Dry Battery Section, National Electrical Manufacturers Association (NEMA) introduces Ray Balfour representing the Dry Battery Section of NEMA and an industry group, Battery Products Alliance.

The Joint Interim Committee on Environment and Energy introduced dry cell battery legislation. We became aware of that in July, 1990 and met with legislators on the issue and discussed the experience from other states. The outcome of the meeting was an agreement to work together on this initiative. We began developing language in concert with those interested parties and HB 336 1 is the result of those efforts. Mr. Balfour will explain the products.

213 REP. NAITO: We originally had a provision to return the batteries to the place of purchase. We have reconsidered and it is perhaps not a good idea to separate these from other hazardous materials. We have prepared the HB 3361-1 amendments and have a hand-engrossed bill (EXHIBIT F).

233 RAYMOND L. BALFOUR, Dry Battery Section, National Electrical Manufacturers Association and the Battery Products Alliance, submits and reads a statement (EXHIBIT G) and displays various types of batteries.

TAPE 72, SIDE B

MR. BALFOUR continues with his statement.

071 JIM CRAVEN, Oregon Council, American Electronics Association, submits and summarizes a prepared statement (EXHIBIT H) in support of Section 3 of the bill and adds they also support the HB 3361-1 amendments.

197 BOB DANKO, Hazardous and Solid Waste Division, Department of Environmental Quality, submits and paraphrases a prepared statement supporting the inclusion of the HB 3361-1 amendments and proposing further amendments (EXHIBIT I).

Household hazardous waste is an important, but very small part of the department's present activities. The 1989 Legislature appropriated money for a three-year pilot project on household hazardous waste collection throughout the state. We are in the midst of that and will be reporting back to the 1993 Legislature on what direction we think the

overall management program of the state should go.

277 Issues discussed: >Dangers of nickel cadmium. >Undetectable sources of contamination. >Fiscal impact statement is based on the bill with the HB 3361-1 amendments. If only role of department is reporting, the fiscal impact will be very low. Department will report back on the fiscal impact to make report to Legislature. >Effect of decomposing materials in landfills. >Lack of infrastructure to collect the batteries and recycling facilities in United States.

TAPE 73, SIDE A

045 QUINCY SUGARMAN, OSPIRG, submits and summarizes a prepared statement in support of HB 3361 as it would be amended by the HB 3361-1 amendments (EXHIBIT J) and expresses support for the amendments proposed by the Department of Environmental Quality.

105 MR. BALFOUR displays batteries used in hearing aids which use mercury as the electrode and zinc air products, an alternative for many, but not all, users of hearing aid batteries. There is no substitute for the mercuric oxide batteries which are used in medical instruments in hospitals. To ban those would pose a severe hardship on people.

"I would recommend you consider requiring collection of the larger mercuric oxide batteries when you revisit this whole issue in 1993. At that time it would be appropriate for you to either decide to collect the smaller mercuric oxide batteries, the hearing aid batteries, or to ban them."

158 CHAIR SCHOON closes the public hearing on HB 3361 and opens the public hearing on HB 290 3.

(Tape 73, Side A) HB 2903 - REQUIRES PUBLIC UTILITY COMMISSION UNDER CERTAIN CIRCUMSTANCES TO AUTHORIZE UTILITY TO FILE PRICE LIST CONTAINING TERMS AND PRICES OF SPECIFIED SERVICES OR PRODUCTS. Witnesses: Gary Wilhelms, U. S. West Communications Mike Kane, Public Utility Commission

The Preliminary Staff Measure Summary is hereby made a part of these minutes (EXHIBIT K).

176 GARY WILHELMS, Director, Government Relations, U. S. West Communications in Oregon, submits a prepared statement (EXHIBIT L) and the HB 2903-1 amendments (EXHIBIT M). He reads the prepared statement.

MIKE KANE, Assistant Commissioner, Utility Program, Public Utility Commission of Oregon, submits and reads a prepared statement maintaining a neutral position on the bill as it would be amended by the HB 2903-1 amendments (EXHIBIT N).

287 Issues discussed: >Process for withdrawal of approval by PUC. >Review of price listings. >Sunset provision of the measure would be nice, but is not essential.

324 CHAIR SCHOON closes the public hearing and opens the work session on HB 290 3.

326 MOTION: REP. WALDEN moves that the HB 2903-1 amendments BE ADOPTED.

VOTE: CHAIR SCHOON, hearing no objection to the motion declares the amendments ADOPTED REP. RIJKEN is EXCUSED.

341 MOTION: REP. WALDEN moves that HB 2903, as amended, be sent to the Floor with a DO PASS recommendation.

VOTE: In a roll call vote, all members present vote AYE. REP. RIJKEN

is EXCUSED.

CHAIR SCHOON declares the motion PASSED.

339 CHAIR SCHOON opens the public hearing on HB 2902.

(Tape 73, Side A) HB 2902 - SUBJECTS CONTRACTS OF TELECOMMUNICATIONS UTILITIES ABOVE CERTAIN MONETARY AMOUNT TO REVIEW BY PUBLIC UTILITY COMMISSION. Witnesses: Gary Wilhelms, U. S. West Communications Ester Elsen, U. S. West Communications Gaylen Gary, MCI Mike Kane, Public Utility Commission Scott Girard, Public Utility Commission

The Preliminary Staff Measure is hereby made a part of these minutes (EXHIBIT O).

360 GARY WILHELMS, Director of Government Relations, U. S. West Communications in Oregon introduces Esther Nelson, Director of Regulatory Affairs for Oregon and Kay Kip, Manager, Affiliated Interest Group in Seattle, submits and reads a prepared statement in support of HB 2902 (EXHIBIT P).

TAPE 74, SIDE A

MR. WILHELMS continues with his statement.

065 REP. STEIN: How do you figure out the \$100,000 a year?

ESTER ELSEN: Our revenues and expenses are looked at by the PUC on a calendar-year basis. It can be that a contract in total as it goes on for many years would add up to more than \$100,000. We typically report the total amount if it is for a given number of years. The measurement is the annual payment.

082 REP. STEIN: Is it true that (under this bill) for every contract you enter into with an affiliate if it is under \$100,000, it would not be reviewed?

084 MS. ELSEN: The measurement would be the annual basis per affiliate. If we had two contracts for different types of services, but with the same affiliate, the measure would be the total. As we make filings with the PUC, we would be needing to look ahead if we were filing a very small one with an affiliate but we knew a second contract was coming. We know that information.

087 MR. WILHELMS: The aggregate idea was done in response to criticism by the PUC staff. This was an effort on our part to move in their direction. Our original intent was to make it contracts under \$100,000. If there were five contracts for \$90,000, that would equate to \$450,000 and they would have all been exempt. The higher the number gets the more the concern grows. We agreed this would eliminate from one-third to one-half of our contracts from the filing requirements; \$100,000 in the aggregate is good enough.

118 REP. BARNES: Are the administrative costs passed on to the rate payers?

118 MR. WILHELMS: That is correct.

120 REP. BARNES: Does the PUC have the authority to call up any contract they have questions about even though they had approved of it some time ago?

121 MR. WILHELMS: Yes, they do.

140 REP. NAITO: Can they call a contract at any time, or only at rate



making time?

141 MS. ELSEN: In our on-going relationship with the PUC, the staff, commissioners, at any time can ask us for any information. I think we work together cooperatively. If staff wanted to inquire about contracts that may be below the threshold, we would produce them.

158 GAYLEN GARY, MCI: MCI is a long distance telecommunications provider and a monopoly customer of the local exchange provider. It is as a monopoly customer of the local exchange company that I come to you to encourage you to reject HB 2902. Passage of this legislation could allow improper business conduct between the telecommunications provider and its affiliate with adverse consequences to the rate payers. >Maybe oversight by the PUC at the time the contract is being considered is an important factor. >Chipping away at the PUC's authority to oversee contracts between telecommunications utilities and companies somehow directly or indirectly could result in monopoly rate payers such as MCI and residential customers up paying higher phone bills. >Without oversight there is no incentive to insure the operations are being run efficiently. >Whether it is intentional or not, the real incentive for the utility is to channel as much of the profits as possible to the affiliate which is not subject to the rate-of-return limits. >The articles (EXHIBIT Q) detail the incident of Nynex Corporation.

286 REP. BARNES: What kind of administrative problem does MCI have?

288 MS. GARY: We are considered a competitive telecommunications provider and not a telecommunications utility. MCI is a competitive provider; we have no monopoly rate payers. U.S. West has monopoly rate payers who have no other option.

339 CHAIR SCHOON: Do you buy services from your affiliates?

MS. GARY: I don't know the answer.

374 MIKE KANE, Assistant Commissioner, Public Utility Commission: We take review of affiliated contracts very seriously. It is one area in which there is financial incentive for a monopoly company to pay a higher price for service from an affiliate. The statutes give us appropriate authority to do that.

He submits and reads a prepared statement for Public Utility Commissioner Ron Eachus (EXHIBIT R) in opposition to HB 2902 and proposing amendments.

TAPE 73, SIDE B

MR. KANE continues reading the statement.

039 REP. BARNES: It sounds like you are controlling competition. Is that the case?

044 MR. KANE: The commission has an obligation to protect the rate payers and to make sure that fair competition exists. We look at market prices when we look at these transactions. The commission has the obligation to protect competitors as well from a monopoly enterprise. >These are the intrastate portions of the contracts; PUC must look at contracts in total. >U. S. West must assure the PUC the contract is an arms-length transaction. >PUC is saying they are willing to not have U. S. West do this for contracts of \$500,000 or less on an intrastate basis if they submit a waiver and the PUC determines it is not controversial and there is no policy reason for the PUC to review the contract ahead of time.

126 SCOTT GIRARD, Administrator, Financial Analysis Division, Public Utility Commission: One of my responsibilities is for reviewing affiliated interest contracts. It is impossible to take a look at a contract in pieces. >If U. S. West signs a contract for \$2 million that affects all 14 states, the allocation process we look at is a separate process. They don't write contracts, as a general rule, for Oregon only; they write the contract between two U. S. West entities. Our concern is from an Oregon perspective. >We recognized that smaller contracts may not need the same level of review and scrutiny that the larger contracts do. That is why we pursued the administrative rule to minimize the amount of time. The time periods they are giving you, at least that they have shared with us before, showing the amount of time they are spending on small contracts was prior to the administrative rule. There have been instances where small contracts have had a significant amount of time spent on them in review. >The purpose of the administrative rule was to recognize that we needed to be more efficient in terms of the amount of time the company had to spend on the contract and the amount of time staff spent on the contract. It was not our desire to do the same level of review of a small dollar amount contract as a very large one. We don't treat them all the same. >The company has told us they do not expect to see any significant cost savings if this statute is passed. If we were able to save Oregon rate payers more money by them eliminating positions looking at affiliated interest contracts, we may be better off. They have told us that is not going to take place.

191 REP. WALDEN: What does the statement mean that says "Even if HB 2902 becomes law, the commission will still require the telephone companies to file the same information as is currently required regardless of the size of the contract if it is necessary to protect the interest of the rate payers."

282 MR. GIRARD: Mr. Wilhelms answered the question on whether the commission has the authority at any time to ask for information relating to contracts. It is true. The commission does have the authority to request the utility to justify those contracts at any time. This legislation effectively removes the commission's approval authority over small contracts.

The distinction is that the way the law is written now, the company must file the contract unless it is waived within 90 days of it being signed.

That was a compromise of last legislative session. Before that it was prior to their consummation of the contract. That means if they do not file within 90 days and we get into a rate case and a contract is not approved, the commission cannot include that in the rates.

233 REP. WALDEN: Does the commission have the authority to require the company to refund anything from a contract the commission later denies?

232 MR. GIRARD: No. We can do a prudence review but if we don't have a rate case for five years from the time the contract is consummated, we cannot go back and get the money from the company.

254 REP. WALDEN: When you get into a rate case and discover there has been a contract where they got more money than they should have, do they end up paying it back by not being able to assess a higher rate later on?

264 MR. GIRARD: That is true. If we determine they paid too much for a service, we can adjust.

335 REP. WALDEN: Do they notify you when they enter into an agreement under this bill?

337 MR. GIRARD: As this bill is written, there is no notification.

There is still an annual reporting requirement under our administrative rules that doesn't relieve them of reporting affiliated interest contracts of any size. There is no approval process with the report. If this bill is passed, the commission would not have the ability to require them to get approval. The only thing we could do to protect the consumers is still require information to be supplied. That is under a different statute and it is not being proposed to be eliminated.

The commission does not approve the contracts in the sense that if they don't approve it the company can't contract. Companies have the ability to contract with whomever they choose to contract with. If they want to contract with an affiliate and pay them what would be an unreasonable amount, the commission cannot preclude that contract. The commission, through the approval process, has the ability to say they have a contract that is so unreasonable that it is not in the public interest and disapprove it. Disapproval doesn't mean the contract ends. All it means is the company is precluded by statute from ever getting and of those contract costs collected from customers.

396 REP. WALDEN: How often have you exercised that?

MR. GIRARD: One time, two or three years ago. The contract was a million dollars.

404 REP. WALDEN: It would have been included even if this bill had passed.

MR. GIRARD: Yes. The point of \$100,000 is not an impact on Oregon rate payers assuming it stays in its current form and is not on a contract-by-contract basis approach. I can't disagree with the company that even if the contract is unreasonable that it will have a dramatic impact on rates. U. S. West Communications', the utility, rates are based on costs plus return on its investment. That provides a tremendous incentive for them to have affiliates whose profits are not regulated to have inflated profits or costs charged to the utility and have those paid by their customers while the revenues received by the affiliates are not regulated in any manner.

445 CHAIR SCHOON closes the public hearing on HB 2902 and declares the meeting adjourned at 5:36 p.m.

Respectfully submitted, Reviewed by,

Annetta Mullins

Terry Connolly Assistant

Administrator

#### EXHIBIT SUMMARY

A -HB 2211, hand-engrossed HB 2211, staff B -HB 2211, HB 2211-1 through -5 amendments, various C -HB 3361, Preliminary Staff Measure Summary, staff D -HB 3361, Legislative Fiscal Analysis, staff E -HB 3361, prepared statement, Rep. Lisa Naito F -HB 3361, HB 3361-1 amendments, Rep. Lisa Naito G -HB 3361, prepared statement, Ray Balfour H -HB 3361, prepared statement, Jim Craven I -HB 3361, prepared statement, Bob Danko J -HB 3361, prepared statement, Quincy Sugarman K -HB 2903, Preliminary Staff Measure Summary, staff L -HB 2903, prepared statement, Gary Wilhelms M -HB 2903, HB 2903-1 amendments, Gary Wilhelms N -HB 2903, prepared statement, Mike Kane O -HB 2902, Preliminary Staff Measure Summary, staff P -HB 2902, prepared statement, Gary Wilhelms Q -HB 2902, background information, Gaylan Gary R -HB 2902, prepared statement, Mike Kane